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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/196,977	11/20/98	RITTER	B DCK40003

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EXAMINER	
PATTERSON, M	
ART UNIT	PAPER NUMBER

3728

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DATE MAILED: 09/27/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/196977

Applicant(s)

Ritter et al.

Examiner

Patterson

Group Art Unit

3728

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/25/99.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 26-51 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 26-51 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 8/25/99 have been approved by the Examiner.

Claim Rejections - 35 USC § 112

2. Claims 26-51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the original specification for the midfoot straps to be attached to the heel of the sole as now claimed and argued. The midfoot strap is shown and described as being attached to the heel portion of the footwear and/or to heel posts.
3. Claims 26-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 26, 36, 41, 46, 50, and 51 the phrases such as "strap connected to the heel portion of said sole" and other similar phrases are vague, indefinite, inaccurate, and confusing because no such structure has been shown or described.

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Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26-29, 32, 36, 37, 39, 46, and 51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Buzzoni (Italian 543576).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 30 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzzoni in view of McBride.

Buzzoni shows a shoe substantially as claimed except for the exact strap system. McBride teaches providing a separate toe strap (18) and midfoot strap (20). It would have been obvious to use the strap arrangement as taught by McBride in the shoe of Buzzoni to provide a more adjustable and conforming strap system.

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8. Claims 30, 33-35, 40, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzzoni in view of Saltzman and Thatcher.

Buzzoni shows a shoe substantially as claimed except for the exact strap arrangement. Saltzman teaches the use of heel posts (10) for attaching a midfoot strap to a heel portion of footwear. Thatcher teaches the use of heel posts (30) with loops at the top to have a separate strap (20) around the heel of the wearer and a front/midfoot/instep strap (36). It would have been obvious to provide heel posts as taught by Saltzman and to provide the heel posts and a separate heel strap (20) as taught by Thatcher in the shoe of Buzzoni to provide a strap arrangement which more snugly and adjustably holds the heel portion of the wearer's foot.

In reference to claims 33, 35, and 49, Thatcher teaches providing separate adjusting means on a toe strap (21) and teaches providing a lateral strap (23) between the toe strap and the instep strap (36). It would have been obvious to provide separate toe strap adjusting means and to provide a lateral strap as taught by Thatcher in the shoe of Buzzoni as modified above to allow the wearer to adjust the toe strap and to securely connect the toe and heel regions of the shoe.

9. Claims 31, 38, 41-43, 45, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzzoni in view of Anderson.

Buzzoni shows a shoe substantially as claimed except for a shank member. Anderson teaches providing a shank member (30) in a sole to allow a strap to slide through a slot. It would have been obvious to provide a shank member as taught by Anderson in the shoe of Buzzoni to allow the strap to slide better through the channel.

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10. Claims 44 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 31, 38, 41-43, 45, and 47 above, and further in view of Saltzman and Thatcher.

Buzzoni as modified above shows a shoe substantially as claimed except for the exact strap arrangement. Saltzman teaches the use of heel posts (10) for attaching a midfoot strap to a heel portion of footwear. Thatcher teaches the use of heel posts (30) with loops at the top to have a separate strap (20) around the heel of the wearer and a front/midfoot/instep strap (36). It would have been obvious to provide heel posts as taught by Saltzman and to provide the heel posts and a separate heel strap (20) as taught by Thatcher in the shoe of Buzzoni as modified above to provide a strap arrangement which more snugly and adjustably holds the heel portion of the wearer's foot.

Thatcher teaches providing separate adjusting means on a toe strap (21) and teaches providing a lateral strap (23) between the toe strap and the instep strap (36). It would have been obvious to provide separate toe strap adjusting means and to provide a lateral strap as taught by Thatcher in the shoe of Buzzoni as modified above to allow the wearer to adjust the toe strap and to securely connect the toe and heel regions of the shoe..

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Response to Arguments

11. Applicant's arguments with respect to claims 26-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3580. Please identify Examiner ____ of Art Unit ____ at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.



Marie Patterson
Primary Examiner
Art Unit 3728

MDP
September 24, 1999